

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**IN RE STATE STREET BANK AND
TRUST CO. FIXED INCOME FUNDS
INVESTMENT LITIGATION**

Case No. 08-MD-1945 (RJH)

This Document Relates to:

**APOGEE ENTERPRISES, INC. ON BEHALF
OF THE APOGEE ENTERPRISES, INC.
401(K) RETIREMENT PLAN.**

Plaintiff,

v.

Case No. 09-cv-1899 (RJH)

**STATE STREET BANK AND TRUST
COMPANY; AND ING INSTITUTIONAL
PLAN SERVICES LLC,
FORMERLY KNOWN AS CITISTREET LLC,**

Defendants.

**AFFIDAVIT OF
ANTHONY NOWAK**

**ING INSTITUTIONAL PLAN SERVICES
LLC, FORMERLY KNOWN AS CITISTREET
LLC,**

**Counterclaim,
Cross-Claim, and
Third-Party Plaintiff,**

v.

**APOGEE ENTERPRISES, INC., APOGEE
PENSION INVESTMENT COMMITTEE,
RUSSELL HUFFER, ANTHONY NOWAK,
DAVID BLANK, GARY JOHNSON,
RICHARD KRAUS, SILVEROAK WEALTH
MANAGEMENT LLC, AND STATE STREET
BANK AND TRUST COMPANY,**

**Counterclaim,
Cross-Claim, and
Third-Party Defendants.**

STATE OF MINNESOTA)
)ss.
COUNTY OF STEELE)

Anthony Nowak, being first duly sworn upon oath, deposes and states as follows:

1. I am Vice President, Finance of Viracon, Inc. ("Viracon"), a subsidiary of Apogee Enterprises, Inc. ("Apogee"). I joined Viracon in 1978, and became Vice President, Finance in 2005.

2. I became a member of Apogee's Pension Investment Committee (the "PIC") in 1998 and continue in that role to this day. I make this affidavit based on my personal knowledge.

3. The Chair of the PIC, Gary Johnson, scheduled a special session of the PIC for August 13, 2007, for the purpose of discussing the recent and abrupt underperformance of State Street Bank and Trust Company's ("State Street") Daily Bond Market Fund which was, at the time, one of the investment funds in the Apogee Enterprises, Inc. 401(k) Retirement Plan (the "Plan").

4. At the August 13 PIC meeting, Chairman Johnson reported that State Street had notified Apogee by letter received from CitiStreet, one of the Plan's service providers, on July 31, 2007, that problems in the subprime mortgage market had adversely impacted the performance of some of State Street's fixed income funds, including the Daily Bond Market Fund.

5. Also at the August 13 PIC meeting, Shannon King of SilverOak Wealth Management LLC, the Plan's investment advisor, informed the PIC regarding his August 9 phone conference with CitiStreet and State Street. Specifically, Mr. King informed the PIC that

he was told in that phone call that it would take 60 to 90 days to exit the Fund, if Apogee wished to do so.

6. The PIC was concerned with the July performance and the anticipated August performance of the Fund. But, based on the representations of State Street and CitiStreet – including, in large part, the representation that it would take 60 to 90 days to exit the Fund – the PIC decided at the August 13 meeting to remain in the Fund, while monitoring it closely.

7. Thereafter, Chairman Johnson scheduled another meeting of the PIC to discuss the underperformance of the Daily Bond Market Fund. This meeting was held on August 28, 2007.

8. At the August 28 meeting, Mr. King reported to the PIC on conversations he had had with CitiStreet and State Street the day before. Specifically, King advised the PIC that the significant and rapid decline in the Daily Bond Market Fund's assets was due, in part, to the Fund's previously undisclosed use of leverage, and in part to other plan sponsors being allowed to leave the Fund on as little as 48 hours' notice.

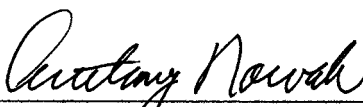
9. Having learned for the first time that the Daily Bond Market Fund was leveraged and that State Street was allowing clients to leave the Fund on as little as 48 hours' notice, the PIC decided to move from the actively-managed Daily Bond Market Fund to a passive bond index fund as soon as possible.

10. Had I learned prior to the August 28, 2007, PIC meeting that State Street was encouraging other investors in its active fixed income funds, including the Daily Bond Market Fund, to exit those funds in late July and early August 2007, and that State Street was allowing them to exit on as little as 24 hour's notice, and had I further learned that, based on this

newly-disclosed information, Chairman Johnson was recommending that the Plan exit the Daily Bond Market Fund immediately, I would have voted to exit the Fund immediately.

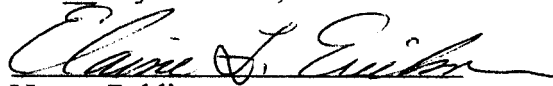
11. Had I learned prior to the August 28, 2007, PIC meeting the information contained in State Street's July 26, 2007, Frequently Asked Questions Sub-Prime/Active Fixed Income Issues document – and, in particular, the information regarding the Fund's significant use of leverage and that investors could exit the Fund with only "normal trade notification" – and I had further learned that, based on that information, Chairman Johnson was recommending that the Plan exit the Fund immediately, I would have voted to exit the Fund immediately.

FURTHER AFFIANT SAYETH NOT.



Anthony Nowak

Subscribed and sworn to before me
this 22 day of March, 2011.



Notary Public

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